

**CUSTOMER RELATIONSHIP AGREEMENT**  
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Overflow Internet Services MSA

## OUR CUSTOMER RELATIONSHIP AGREEMENT

### 1. OUR CUSTOMER RELATIONSHIP AGREEMENT (CRA)

#### What is “Our Customer Relationship Agreement”?

- 1.1. Our Customer Relationship Agreement (or CRA) sets out the standard terms and conditions on which we supply our services and products to our customers.

If there is any inconsistency between any of the terms of our CRA, the order of precedence will be the Service Description, the General Terms and the Pricing Schedule, except that clauses 16 and 17 of the General Terms always prevail over all other terms in our CRA.

#### Where can you obtain a copy of our CRA?

- 1.2. A copy of our most current CRA as well as a summary of this CRA is available at our offices and on our website. If you have a disability that impedes your ability to read these documents or have difficulty reading or understanding English, you may call our Customer Support for assistance.

#### Changes to Our Customer Relationship Agreement

- 1.3. In this fast moving industry, we may need to change the CRA from time to time. This may be done without your agreement.

If / We reasonably consider that a change to any term of our CRA is likely to benefit you or have a neutral impact on you, We can make the change immediately and do not need to tell you.

However, rest assured that if We make any change which will be detrimental to you, We will notify you at least 21 working days before the proposed change takes effect, either by publishing an advertisement in a national newspaper or notifying you directly, in accordance with the provisions of the Telecommunications Act. We may notify you directly by:

- (a) Direct mail (to the last address that you have given to us);
- (b) Email (to the last email address that you have given to us); or
- (c) Bill message.

#### Telecommunications Legislation

- 1.4. Telecommunications Legislation permits us to supply telecommunications services to you on the Terms and Conditions of a “Standard Form of Agreement”. Our Customer Relationship Agreement is our “Standard Form of Agreement”. Under the Telecommunications Legislation you and we must comply with our Customer Relationship Agreement unless you and we have agreed differently.

## 2. YOUR APPLICATION FOR SERVICE

- 2.1. The Service that you have selected is described in the Service Description applicable to the Service you have selected.

### Making an Application

- 2.2. You may make an Application for supply of the Service to you by:
- (a) Completing and submitting an online application form located on our website; or
  - (b) Completing paperwork that we have provided you with and returning it via mail/facsimile or email.
- 2.3. Subject to our acceptance of your Application in accordance with clause 2.4, our CRA commences on:
- (a) If you apply online, the date you submit the application form;
  - (b) If you sign an application form, the date you sign the application form;
  - (c) In any other case, the date on which you begin using the service.

### Accepting your Application

- 2.4. When you request us to supply the Service to you, which may be made using an application form provided by us, available from our website, or completed by on-line application on our website, or completed over the telephone with our customer representative ("**Application**"), We decide whether to accept your Application and to supply the Service to you based on:
- (a) the particular terms for that Service;
  - (b) your eligibility for that Service;
  - (c) Its availability to you;
  - (d) Your meeting our credit requirements;
  - (e) The accuracy of the information provided to us by you and
  - (f) your prior conduct or history in respect of any previous supply by us of any goods or services to you, including your compliance with the relevant terms and conditions under which We supplied those goods or services.

## 3. CONNECTING THE SERVICE

- 3.1. Under the Telecommunications Legislation We have to try to connect some Services within particular timeframes. For other Services We will try to connect the Service within a reasonable time.
- 3.2. We decide the route and technical means that We use to provide the Service.
- 3.3. You must reasonably co-operate with us to allow us to connect and supply the Service to you safely and efficiently.

## 4. USING THE SERVICE

### Comply with all laws

4.1. In using the Service, you must comply with all laws and all directions by a Regulatory Authority and reasonable directions by us.

### Prohibited Uses

4.2. You must not use, or attempt to use, the Service:

- (a) To commit an offence or to infringe another person's rights;
- (b) In any way which damages or interferes (or threatens to damage or interfere) with the operation of a Service or with the efficiency of our Network or a Supplier's Network (including because you have inadequate capacity);
- (c) In any way which makes it unsafe or which may damage any property or injure or kill any person;
- (d) In an excessive or unusual way;
- (e) to transmit, publish or communicate any material which is defamatory, offensive, indecent, abusive, menacing, threatening, harassing or unsolicited, or;
- (f) For illegal purpose or practices;
- (g) Otherwise misuse the Service, or allow anybody else to do so.

### Your responsibility

4.3. You are responsible for and must pay for any use of the Service, whether you authorise it or not, and you will continue to be liable for all charges relating to any use of the Service if you allow another person to occupy the Premises or use the Service. Also, if you do not disconnect the Service when you leave the Premises or transfer legal responsibility for the Service in accordance with clause 19.1, you must pay for any use of the Service by later occupants or others. Any person who uses the Service, or allows someone else to use it, after you have vacated the Premises, is jointly and individually liable with you for any charges relating to that use.

### Interception

4.4. You acknowledge that We may be required to intercept communications over the Service and may (but are not obligated to) monitor your usage of the Service and communications sent over it for the purposes of ensuring your compliance with our CRA and our compliance with the law, and with any request or direction of a Regulatory Authority, an emergency services organisation or other competent authority. In this regard the terms of our privacy policy are also enforced. The privacy policy is located at <http://www.overflow.net.au> your reference.

## 5. EQUIPMENT

### Our Equipment

- 5.1. In order to use the Service, We may provide to you equipment or cabling which We own or lease ("**Our Equipment**").
- 5.2. Where We provide Our Equipment to you in connection with the Service:
- (a) ownership or title in Our Equipment is not transferred to you;
  - (b) risk in Our Equipment passes to you on delivery;
  - (c) You must comply with our reasonable directions relating to our rights of ownership of Our Equipment;
  - (d) You must only use Our Equipment in accordance with the manufacturer's specifications and our written directions;
  - (e) you are responsible for Our Equipment and must pay us for any loss or damage to Our Equipment, except to the extent that it is caused by us or for fair wear and tear;
  - (f) You must not part with possession of Our Equipment except to us and you must keep Our Equipment free from any encumbrance;
  - (g) You must allow us to inspect, test, service, modify, repair, remove or replace our equipment, or to recover it after the Service is cancelled;
  - (h) you must ensure that Our Equipment will not be altered, repaired, serviced, moved or disconnected except by service personnel approved by us;
  - (i) You must ensure that you have all necessary consents and approvals (including landlord approval where applicable) necessary or desirable for us to deliver, install and maintain Our Equipment at the Premises; and
  - (j) You must provide adequate and suitable space, power supply and environment for all Our Equipment located on the Premises.

### Your Equipment

- 5.3. You must ensure that all equipment you use in connection with the Service, other than Our Equipment ("**Your Equipment**") complies with all laws and relevant technical standards issued by a Regulatory Authority and all reasonable directions by us, including making any changes to Your Equipment to avoid any danger or interference it may cause.

### Disconnection of Your Equipment

- 5.4. If you do not comply with any of your obligations under clause 5.3 We may disconnect your equipment from the Service or require you to do so. We will try to give you reasonable notice before disconnection but may do so immediately in an emergency.

### Purchased Equipment

- 5.5. You may purchase equipment from us for use in connection with the Service ("**Purchased Equipment**"). You must pay for that equipment on your receipt of the invoice from us. Title to the Purchased Equipment passes to you when you pay for it in full. Risk in the Purchased Equipment passes to you on delivery to your nominated delivery address.

- 5.6 We will use reasonable efforts to transfer to you any manufacturer's warranty in any Purchased Equipment, from the time title passes to you.
- 5.7 If you purchase the wrong equipment, you may exchange it provided that it is returned to us undamaged and complete with all components and with the packaging intact, within 14 days of delivery to our nominated delivery address. To help cover our costs, a restocking fee may apply as specified in the Pricing Schedule.

## 6. THE PREMISES

### Access

- 6.1 In order to provide the Service to you, We may need access to the Premises. You agree to provide us safe and prompt access to the Premises:
- (a) to install any equipment for a Service you have requested;
  - (b) to inspect, test, maintain, modify, repair or replace any equipment; and
  - (c) to recover Our Equipment after the Service is cancelled

### Owner's permission

- 6.2 If you do not own the Premises, you must obtain the owner's permission for us to access the Premises and install and maintain any equipment. You promise to us that you have obtained that permission. You indemnify us against (and must pay us for) any claim the owner of the Premises makes against us relating to our entering the Premises or installing or maintaining any equipment at the Premises.

## 7. QUALITY AND MAINTENANCE

### Standard of Services

- 7.1 We aim to provide, but do not guarantee, continuous or fault-free services.

### Customer Support

- 7.2 The relevant Service Description sets out our maintenance commitments that apply to the Service. Generally, We provide Customer Support between the hours of 10am - 8pm Monday to Friday (Eastern Australian Standard Time) and 10am - 8pm Saturday, Sunday and on Public Holidays (Eastern Australian Standard Time). Calls outside these hours are generally diverted to a messaging service for action during our normal operating hours, or escalation for some Service types.

Various special support lines may have varying hours of support coverage. You acknowledge that any calls you make to our Customer Support Centre may be monitored or recorded for quality and/or training purposes and you consent to us monitoring or recording such calls. Please refer to our website for specific details.

If you experience any fault with the Service, you may report that fault to us by telephone on 07 5546 3832 (or any such other number notified to you by us from time to time) or by sending an email to us. Particular timeframes for repairing faults in our Phone Service may be set out in the Customer Service Guarantee

## **Maintenance**

- 7.3 We may conduct maintenance on any of our Network, equipment or facilities. We will try to conduct scheduled maintenance outside normal business hours but may not always be able to do so. We may also suspend the supply of the Service in accordance with clause 14.2.

## **Faults caused by You, Your Equipment or by other Suppliers**

- 7.4 Before reporting a fault to us, you must take reasonable steps to ensure that the fault is not a fault in any of Your Equipment. We are not responsible for rectifying any fault in the Service where they fault arises in or is caused by another Suppliers' Network or by Your Equipment.
- 7.5 If you report a fault in the Service and ask us to come to the Premises to repair it and, once at the Premises, We determine that the Service is not faulty or the fault is associated with Your Equipment rather than the Service, We may charge you an incorrect call-out fee and, if you request us to repair Your Equipment, our reasonable charges for such repair. We will advise you of the incorrect call-out fee before We attend the Premises.
- 7.6 We can charge you for repairing a fault if it is caused by something you do (or do not do), or by something someone else using the Service does (or does not do), intentionally, recklessly or negligently.

## **Maintenance of Your Equipment**

- 7.7 You are responsible for the proper functioning and security of Your Equipment. You must maintain and repair all of Your Equipment used in connection with the Service.

## **8. CHARGES**

### **Pricing Schedule**

- 8.1 The charges for the Service are set out in our Pricing Schedule (or in the terms of an applicable Special Offer under clauses 8.5 and 8.6) and any additional charges are set out in your Application.
- 8.2 You must pay all charges for the Service in accordance with any applicable provisions of the Service Description and the Pricing Schedule. Charges for the Service accrue from no later than the Service Commencement Date.
- 8.3 We may charge you an additional amount to service, modify, repair or replace the Service or any equipment you use in connection with the Service as a result of:
- (a) a breach of our CRA by you;
  - (b) a negligent or fraudulent act or omission by you or by any of your employees, agents or contractors;
  - (c) a failure of any of Your Equipment; or
  - (d) A failure or fluctuation in electrical power supply, including where caused by an electrical stor

- 8.4 In order to provide some services to you, We enter into arrangements with other Suppliers. You acknowledge that our charges to you for the Service may vary as a result of a variation of a Supplier's charges to us, or may pass on any additional charges a Supplier charges to us. We will give you reasonable notice of any proposed increase in charges or additional charges and you may cancel the Service without incurring any Break Fee or other charges (other than those incurred by you before cancellation), by giving notice to us within 42 days after the date We give you notice of the proposed variation.

### **Special Offers**

- 8.5 From time to time We may make special offers ("Special Offers") in connection with the Service. These Special Offers may be notified in a general advertisement or specifically offered to you and may be subject to certain conditions including:
- (a) a variation by us of the price or the terms of supply (including any Contract Term); or
  - (b) A requirement that you acquire all relevant services for a minimum Contract Term and pay a Break Fee if you cancel the service before the end of that Minimum Contract Term.
- 8.6 You may accept a Special Offer in the way notified by us (which may include completing and submitting an Application). If you validly accept a Special Offer, the terms of that Special Offer will prevail to the extent of any inconsistency over those which would otherwise apply in our CRA, and will apply until the expiry of the Special Offer as notified by us. In all other respects, the terms and conditions of our CRA continue to apply. After the expiry of the Special Offer, the Special Offer pricing and terms will cease to be available and, unless We give you reasonable notice otherwise, the terms of our CRA will apply thereafter.

## **9. BILLING AND PAYMENT**

### **Bills**

- 9.1 We may bill you:
- (a) for recurring or fixed charges, in advance;
  - (b) for variable charges, in arrears (for example, excess traffic usage charges);
  - (c) for installation or setup charges, before installation;
  - (d) for any equipment you purchase from us, on or after delivery; and
  - (e) for any other charges set out in your Application or the Pricing Schedule, in accordance with the Pricing Schedule or the Service Description.
  - (f) Using another invoice in the same month for billing alignment purposes where applicable
- 9.2 We will bill you in accordance with the billing period described in the Service Description or the Pricing Schedule. We can also issue an interim bill at any time.
- 9.3 Bills will be calculated by reference to data recorded, logged or received by us and our Suppliers and you acknowledge that in calculating charges We need only look at that data as recorded logged or received by us or our Suppliers.
- 9.4 We try to include all charges relating to a billing period on that bill. Where that does not happen, bills may include charges from previous billing periods except where such charges have been billed more than 190 days from the date the charge was incurred by you.



- 9.5 We may reissue any bill if any error is subsequently discovered. If you have overpaid as a result of a billing error, your account will be credited with the overpayment or, if you have stopped acquiring the Service from us, We will refund the overpayment promptly after your request and after deduction of any other amounts due by you to us or a Related Overflow Internet Services Entity.
- 9.6 Subject to clause 10 (Billing Disputes), you must pay each amount billed by the due date specified in the bill and in the manner specified in the Service Description or the Pricing Schedule.

#### **Credit Card and Direct Credit Payments**

- 9.7 Payment by Credit Card or Direct Credit is the default standard accepted method of payment.

#### **Late or Dishonoured Payments**

- 9.8 If you do not pay a bill:
- (a) By its due date, then We may charge you a late fee equal to 8%; and
  - (b) In addition, you must pay our reasonable expenses and costs in recovering payment from you. We can also suspend or cancel the Service in accordance with clause 14.2(a).
- 9.9 If you pay a bill by cheque and the cheque is dishonoured, you may be required to pay an additional administration fee.

### **10. BILLING DISPUTES**

- 10.1 If you wish to dispute a charge in a bill you must do so in accordance with this Clause 10.

#### **Bills Valid Unless Disputed**

- 10.2 Except to the extent you raise a valid billing dispute in respect of a bill issued by us, you agree that the bill is valid and payable (and you must pay any undisputed amount included in the bill in accordance with clause 9.6)

#### **Raising a Valid Billing Dispute**

- 10.3 To raise a valid billing dispute, you must, within 12 months of the date of the bill, make a good faith request to us to investigate the specific charges or bill in dispute and provide details which show that a particular charge or bill is incorrect (for example missing details, wrong account details and wrong addresses, wrong service number, incorrect Service charges).
- 10.4 If you raise a valid billing dispute, then We will, within a reasonable timeframe, conduct investigations which are reasonably necessary and appropriate in the circumstances of the dispute. At the end of these investigations, if We reasonably determine that;
- (a) There is an error in the bill, We will issue a corrected invoice or adjustment note as appropriate and, if you have overpaid as a result of the billing error, credit your account with the overpayment or, if you have cancelled your Service with us, refund the overpayment promptly after deduction of any other amounts due by you to us or a Related Overflow Internet Services Entity; or
  - (b) The bill is correct, you must pay any outstanding amount (together with interest on that amount calculated in accordance with clause 9.9(a) from the original due date for payment) within 5 Business Days.

### **Claims to be made within 12 months**

10.5 You may only make a claim or commence proceedings alleging that any charge or bill is incorrect, or you are entitled to a refund for overpayment, if you do so within 12 months of the date of the bill or overpayment.

### **Charges not expressed to be GST inclusive**

11.1 If GST is imposed on any supply We make to you under our CRA and the charges, or other consideration, payable for the supply are not expressed to be inclusive of GST, you must pay to us an additional amount calculated by multiplying the value of that GST-exclusive consideration (without deduction or setoff) by the prevailing GST rate. We will issue a tax invoice to you for any supply on which GST is imposed. This clause applies if you ordinarily reside in a State or Territory within Australia.

### **Penalties and Interest**

11.2 Where We become liable for any penalties or interest as a result of the late payment of GST due to your failure to comply with the terms of our CRA (including this clause 11) or your obligations under any applicable law, then you must pay to us an additional amount equal to those penalties and interest.

## **12. PERSONAL INFORMATION**

### **Collection of your Personal Information**

- 12.1 We may collect Personal Information about you and in accordance with our Privacy Policy for the purposes set out in Clause 12.3 from;
- (a) You directly, when you provide information by phone or in application forms, or when you submit your personal details through our web sites;
  - (b) Our employees, agents, contractors or Suppliers;
  - (c) A Related Overflow Internet Services Entity;
  - (d) A credit reporting agency, credit provider or fraud-checking agency;
  - (e) Your representatives;
  - (f) Other telecommunication and information service providers; and
  - (g) Publicly available sources of information.

### **Disclosure of Your Personal Information**

- 12.2 We may disclose Personal Information about you for the purposes set out in Clause 12.3 to:
- (a) Our employees, agents or contractors;
  - (b) A Related Overflow Internet Entity;
  - (c) Suppliers who need access to the Personal Information to provide us with services to enable us to supply the Service to you;
  - (d) A credit reporting agency, credit provider or fraud-checking agency;
  - (e) Our professional advisers, including our accountants, auditors and lawyers;

- (f) Other telecommunication and information service providers (for example, if you obtain services from other providers, Telstra may need to disclose your personal information for billing purposes);
- (g) Your authorized representatives or your legal advisers (for example, when requested by you to do so); or
- (h) Government and Regulatory Authorities and other organizations, as required or authorized by law (for example, to the operator of the Integrated Public Number Database (IPND), which supplies information for telephone directories and to law enforcement agencies for purposes relating to the enforcement of criminal and other laws.

### **Use of your Personal Information**

12.3 We may collect, use and disclose Personal Information about you for the purposes of:

- (a) Verifying your identity;
- (b) Assisting you to subscribe to our services and the services of Overflow Internet Related Entities;
- (c) Providing the services you require from us and from Overflow Internet Related Entities;
- (d) Administering and managing those services, including billing, account management and debt collection;
- (e) Conducting appropriate checks for credit-worthiness and for fraud;
- (f) Determining whether to provide to you (or to cease or limit the provision to you of) personal or commercial credit and the ongoing credit management of your account;
- (g) Researching and developing our services;
- (h) Business planning; and
- (i) Promoting and marketing our services, products and Special Offers to you and the products and services of Related Overflow Internet Services Entities.

### **Access to Personal Information**

12.4 If you are a natural person (i.e. an individual), you are entitled to access your Personal Information held by us, unless We are permitted or required by law to refuse such access.

### **Failure to Supply Personal Information**

12.5 If you choose not to provide all or part of the Personal Information We request, We may not be able to provide you with the Services requested by you, or We may refuse to provide, or limit the provision to you of, any Service or personal or commercial credit requested by you.

12.6 By providing Personal Information to us and acquiring the Service, you acknowledge and consent to the collection, use and disclosure of your Personal Information as set out in this clause 12 and in accordance with our privacy policy. A copy of our Privacy Policy is available at our offices or on our website.

### **13. VARIATIONS TO THE SERVICE**

#### **Variations Requested by You**

- 13.1 If you request a variation to the Service and we, in our discretion, make that variation, then:
- (a) Revised charges may apply to the varied Service as notified to you by us;
  - (b) A plan change fee may apply to the varied Service as notified to you by us and as set out in the Pricing Schedule.
- 13.2 You acknowledge that if the Service is downgraded at your request in accordance with paragraph 13.1:
- (a) We will suffer loss in connection with the cost of Network components no longer required to supply the Service after the downgrade; and
  - (b) A Downgrade Charge represents a genuine pre-estimate of the administrative costs We will incur as a result of the Downgrade and is not a penalty.

#### **Variations made by Us**

- 13.3 We may at any time vary the Service if reasonably required for technical operational or commercial reasons. If doing so is likely to have a significant detrimental impact on your use of the Service, then:
- (a) We will give you notice in writing of the intended variation at least 21 days before the date on which the variation takes effect; and
  - (b) You may cancel the service without incurring any Break Fee (excluding those incurred before cancellation) by giving notice to us within 42 days after the date of the notice referred to in clause 13.3(a).

### **14. CANCELLING OR SUSPENDING THE SERVICE**

#### **Cancellation or Suspension by Us**

- 14.1 We may, without liability, cancel the service:
- (a) If there is no Contract Term specified in your Application or the Service Description, at any time by giving 30 days notice to you;
  - (b) If a Contract Term is specified in your Application or the Service Description, at any time after the end of the Contract Term by giving 30 days notice to you; or
  - (c) If We reasonably determine that it is not technically or operationally feasible to supply the Service to you, at any time prior to the Service Commencement Date by giving you notice.
- 14.2 We may, without liability, immediately cancel, suspend or restrict the supply of the Service to you if:
- (a) You fail to pay any amount owing to us by the due date and you fail to pay that amount within 7 days after we give you notice requiring payment of that amount, except that we may not give you such notice in respect of an amount which is validly disputed in accordance with clause 10 until after we have completed the investigations referred to in clause 10);

- (b) You breach a material term (other than a breach which separately gives rise to rights under this clause 14.2) and that breach is not capable of remedy;
- (c) You breach a material term (other than a breach which separately gives rise to rights under this clause 14.2) and, where that breach is capable of remedy, you do not remedy that breach within 14 days after We give you notice requiring you to do so;
- (d) You become bankrupt or insolvent or appear likely to do so and we reasonably believe that it is unlikely that we will receive or retain amounts due and payable by you under our CRA;
- (e) You vacate the Premises or you die, or in the case of partnership, on dissolution or on the filing of an application to dissolve the partnership and We reasonably believe that it is unlikely that we will receive or retain amounts.
- (f) Due and payable by you under our CRA;
- (g) A Supplier terminates its agreement with us, or ceases to supply services to us, and We are not able to provide the Service using services of an alternate Supplier on terms reasonably acceptable to us.
- (h) There is an emergency;
- (i) Doing so is necessary to maintain, repair or restore any part of our Network or a Suppliers' Network used to supply the Service, or for other operational reasons;
- (j) You breach clause 4 or clause 5.3 or your obligations relating to the use of the Service under the Service Description, or otherwise misuse the Service;
- (k) We reasonably suspect fraud or other illegal conduct by you or any other person in connection with the Service;
- (l) If We or a Related Overflow Internet Services Entity is entitled to (or does) suspend, terminate or cancel any other service supplied to you, or is entitled to (or does) terminate any other agreement with you and we reasonably believe or suspect that you are a credit risk;
- (m) We are required by law or in order to comply with an order, direction or request of a Regulatory Authority, an emergency services organization or any other authority;
- (n) The ACCC issues us with a Competition Notice in respect of the Service or we anticipate that it may do so;
- (o) Providing the Service to you may be illegal or we anticipate that it may become illegal;
- (p) A Force Majeure Event prevents the supply of the Service in accordance with our CRA for more than 14 days;
- (q) We reasonably believe a threat or risk exists to the security off the Service or the integrity of our Network or a Supplier's Network;
- (r) There is excessive usage of the Service;
- (s) We are allowed to under another provision of our CRA; or
- (t) We reasonably consider you a credit risk. We consider that you are a credit risk when there is some doubt as to your ability to pay by the due date based on factors such as previous payment history and payment behavior (e.g. late payments, dishonoured payments or failure to pay), any previous advice from you about a potential inability or unwillingness to pay, where your usage is inconsistently high when compared with previous usage patterns or pending bankruptcy or insolvency.
- (u) In breach of our copyright policy found on our website [www.overflow.net.au](http://www.overflow.net.au)

14.3 If we suspend the Service under clause 14.2 then we may later cancel the Service for the same or a different reason.

## Notice

- 14.4 We may exercise our rights under clause 14.2 immediately by giving you notice, but:
- (a) We will try to give you reasonable notice before exercising our rights under clause 14.2 by reason of the circumstances referred to in clauses 14.2(f), (h), (m) or (n);
  - (b) We may be unable to give you notice in the event of an emergency; and
  - (c) We will not be required to give you notice if we exercise our rights by reason of the circumstances referred to in clause 14.2(j)

## Cancellation or Suspension by You

- 14.5 You may cancel the Service without liability;
- (a) If there is no Contract Term specified in the Service Description or your Application, at any time by giving us notice;
  - (b) If a Contract Term is specified in the Service Description of your Application, at any time after the end of the Contract Term by giving us notice;
  - (c) At any time by giving us notice if:
  - (d) We breach a material term of our CRA and that breach is not capable of remedy; or
  - (e) We breach a material term of our CRA and that breach is capable of remedy but we fail to remedy that breach within 14 days after you give us notice requiring us to do so;
- 14.6 You may cancel the Service before the end of the Contract Term by giving written notice to us but you may be required to pay a Break Fee in accordance with clause 15.3(b).
- 14.7 You may ask us to suspend the Service by giving notice to us. We will try to do so within a reasonable period if it is a Service for which suspension is an option. ADSL Services cannot be suspended.
- 14.8 If you request cancellation of the Service before or after the end of the contract term, you must;
- (a) Do so in writing, either via email or by completing a service cancellation form which is available upon request.
  - (b) Provide 30 days notice and pay any outstanding charges up to and including the 30 day notice period.

## 15. CONSEQUENCES OF SUSPENSION AND CANCELLATION

### Consequences of Suspension

- 15.1 If the Service is suspended in accordance with our CRA, then you will not have to pay any charges for the Service while it is suspended. However, if the Service is suspended:
- (a) By reason of the circumstances referred to in clauses 14.2(a), (b), (c), (d), (e), (i), (j), (k), (l), (q) or (r); or
  - (b) For an insignificant period as a result of the circumstances referred to in clause 14.2(h), you must pay all charges (other than usage based charges) arising before, during and after suspension in accordance with our CRA.

- 15.2 If we reconnect a Service that has been cancelled, you may have to pay us a reconnection charge. You will not be required to pay a reconnection charge if the Service was cancelled pursuant to clause 14.5(c) or due to our fault or negligence.

### Consequences of Cancellation

- 15.3 If the Service is cancelled in accordance with our CRA (other than in accordance with clause 14.5(b) or (c)):
- (a) Before the Service Commencement Date, we can charge you any costs incurred by us in preparing to provide it to you; and
  - (b) During the Contract Term then you must pay to us the Break Fee.
- 15.4 You acknowledge and agree that if the Service is cancelled before the end of the Contract Term:
- (a) We will suffer loss in connection with the cost of Network Components no longer required to supply the Service after the cancellation;
  - (b) The Break Fee represents a genuine administrative cost we will incur as a result of the early cancellation and is not a penalty;
- 15.5 If the Service is cancelled you still have to pay all charges incurred before the cancellation. We will refund any overpayment on your account and any money that you have paid in advance for the cancelled Service on a pro-rata basis to you. However, we can deduct from your refund any amount that you owe to us, such as charges you have incurred before cancellation or any applicable Break Fee.
- 15.6 In the event that there is credit remaining on your account at the time of cancellation, you will receive the credit via your listed credit card without being charged the Handling Fee. We reserve the right to charge any associated merchant fees, as they are a reflection of the costs incurred by us to prepare the refund for you. If a cheque or other method of refund is required a Handling Fee is payable.
- 15.7 On cancellation of the Service for any reason:
- (a) You will, at your cost, immediately stop using and return to us, or allow us to remove, any of Our Equipment, equipment you have purchased but not fully paid for, or other material of ours (including any software) on the Premises or in your possession or control;
  - (b) Unless our CRA expressly states otherwise, each person's accrued rights and obligations are not affected;
  - (c) You must immediately stop using the Service; and
  - (d) The parts of our CRA which are by their nature intended to survive cancellation will continue unaffected, including clause 5 (Equipment), clause 9 (Billing and Payment), clause 10 (Billing Disputes), clause 11 (GST), clause 12 (Personal Information), this clause 15 (Consequences of Suspension and Cancellation), clause 16 (Our Liability to You), clause 17 (Your Liability to Us), clause 19 (Assignment and Subcontracting) and clause 20 (General).

## 16. OUR LIABILITY TO YOU

### Personal Injury and Death

- 16.1 We accept liability for any loss, cost, liability or damage incurred by you (but excluding Consequential Loss) arising from personal injury or death to you or your Personnel to the extent it is caused or contributed to by our negligence in connection with our CRA.

### Property Damage

- 16.2 We accept liability for our negligence in relation to supplying the Service if it causes damage to your property or equipment but only by repairing or replacing the property or paying you the cost of doing so.

### Interruption to the Service

- 16.3 We accept liability to you for Interruptions to the Service which are a result of our fault or negligence, to the extent of a refund or rebate for the period of the interruption. Full details can be found on the relevant Service Level Agreement for each Service.

### Quality of Service

- 16.4 Certain laws imply terms into contracts for the supply of goods or services that cannot be excluded (e.g. that services are provided with due care and skill and goods are reasonably fit for their purpose and of a certain quality). If those terms are implied into our CRA and we breach them, we accept liability for the breach. Otherwise, we exclude all conditions and warranties implied into our CRA and limit our liability for any non-excludable conditions and warranties to re-supplying, repairing or replacing the relevant goods or services where the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption and where it is fair and reasonable to do so.

### Customer Service Guarantee

- 16.5 You may also have certain rights and remedies under the Customer Service Guarantee, which establishes minimum connection and fault repair times and entitles you to specified amounts of damages if they are breached. We accept liability to you in accordance with, and subject to, the Customer Service Guarantee.

### Suspending the Service

- 16.6 We exclude any liability to you (whether based in contract, tort (including negligence), statute or otherwise) for suspending the Service where we do so in accordance with our CRA.

### Contributory Loss

- 16.7 Our liability for any loss, cost, liability or damage suffered or incurred by you under or in connection with our CRA or the Service (whether based in contract, tort (including negligence), statute or otherwise) is reduced to the extent that your acts or omissions or your equipment (or the acts, omissions or equipment of a third person, including a Supplier) cause or contribute to that loss, cost, liability or damage.

### Consequential Loss

- 16.8 We exclude any liability to you for any Consequential Loss suffered or incurred by you in connection with the supply or Interruption of any goods or services (including the Service) or with our CRA (whether based in contract, tort (including negligence), statute or otherwise).



### **Force Majeure Event**

- 16.9 We are not liable for failing to comply with any of our obligations under our CRA if a Force Majeure Event occurs which prevents us from performing those obligations.

### **When We are Not Liable to You**

- 16.10 We are only liable to you in the cases set out in this clause 16. Otherwise we exclude any liability we might otherwise have to you in connection with our CRA or the Service to the extent that such liability is not expressly accepted by us under this clause 16.

## **17. YOUR LIABILITY TO US**

### **Joint Customers**

- 17.1 If you and one or more others are the customer for a Service, each of you is jointly and individually responsible for all charges and other obligations relating to that Service.
- 17.2 You indemnify us against (and must pay us for) any loss, damage, cost or liability (including reasonable legal costs) we suffer or incur relating to:
- (a) The use (or attempted use) of the Service; or
  - (b) Equipment used in connection with the Service
- 17.3 You must ensure that any person who you allow to use the Service, or to whom you ask us to supply the Service directly, complies with our CRA as if they were you.

## **18. PUBLIC ADDRESSING IDENTIFIERS**

- 18.1 The Service may use identifiers such as an IP address or domain name ("Public Addressing Identifiers"). You must comply with the requirements of any Regulatory Authority or other body which administers Public Addressing Identifiers.
- 18.2 You acknowledge and agree that:
- (a) We do not control the allocation of Public Addressing Identifiers;
  - (b) We are not liable to you if we are required to change, withdraw, suspend or reassign any Public Addressing Identifiers as a result of any direction given by a Regulatory Authority or other body which administers Public Addressing Identifiers; and
  - (c) On cancellation of the Service, your right to use a Public Addressing Identifier may cease.

## 19. ASSIGNMENT AND SUBCONTRACTING

- 19.1 You can assign or transfer legal responsibility for the Service if you obtain our prior written consent.
- 19.2 To the extent they are assignable; we may at any time assign:
- (a) Our rights under our CRA to any person;
  - (b) Assign our obligations under our CRA to a Related Overflow Internet Services Entity that is able to perform those obligations and, if that Related Overflow Internet Services Entity undertakes to perform those obligations, we will be released from any further performance with effect from the date of transfer.
- 19.3 We may perform any of our obligations under our CRA by arranging for them to be performed by another person, including a Supplier or a Related Overflow Internet Services Entity.

## 20. GENERAL

### Confidentiality

- 20.1 You and we each agree to keep confidential the other's Confidential Information. You and we will not use or disclose the other's Confidential Information for any purpose, other than:
- (a) To the extent necessary to perform obligations or exercise rights under our CRA;
  - (b) To the extent disclosure is required by law or the listing rules or a stock exchange or a direction by a Regulatory Authority; or
  - (c) To professional advisors in connection with our CRA.
- 20.2 For clarity, we may refer to you as a customer or ours in our press releases, or in our marketing sales or financial material or reports.

### Notice

- 20.3 A notice, approval or consent to be issued under the CRA must be in writing, except for variations by us, for which notice can be given in accordance with the Telecommunications Act. In the absence of evidence to the contrary, such notice, approval or consent will be taken to be received:
- (a) If left at the address of the addressee, at the time it was left;
  - (b) If sent by ordinary post, on the third day after posting;
  - (c) If sent by express post, on the next day; and
  - (d) If sent by facsimile or electronic transmission, at the time when the machine on which the notice is sent, reports in writing that the notice has been transmitted satisfactorily.

### Waiver

- 20.4 If we have a right arising out of a breach by you of our CRA and we do not exercise that right, we do not waive that right, unless we do so in writing signed by us, or our right to insist on performance of that or any other obligation at any other time.

## Severance

20.5 If a provision of CRA is void, voidable or unenforceable, it will be severed and the remainder of our CRA will not be affected.

## Governing Law

20.6 Our CRA is governed by the laws of the Commonwealth of Australia and the laws of the state or territory in which you ordinarily reside. You and We agree to submit to the exclusive jurisdiction of the courts of the Commonwealth, and its states and territories.

## 21. DEFINITION AND INTERPRETATION

### In Our CRA:

**Application** has the meaning set out in clause 2.4

**Break Fee** means the relevant cancellation fee or termination charge (if any) calculated in accordance with the Pricing Schedule, a Service Description or any appendix to the Service Description.

**Confidential Information** means of a person means all information of that person (“**Owner**”) of a confidential nature, which another person (“**Recipient**”) first becomes aware, whether before or after the date of the original Application, either through disclosure by the Owner to the Recipient or otherwise through the Recipient’s involvement with the Owner. Confidential Information does not include information:

- (a) The Recipient creates (whether alone or jointly with any person) independently of the Owner’s Confidential Information;
- (b) That is public knowledge (otherwise than as a result of a breach of confidentiality by the Recipient or any person to whom it has disclosed the information); or
- (c) Obtained without restriction as to further disclosure from a source other than the Owner through no breach of confidentiality by that source. In respect of us, “Owner” and “Recipient” includes us and each Related Overflow Internet Services Entity.

**Consequential Loss** means:

- (a) Loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damages; and
- (b) Any penalties or fines imposed by a Regulatory Authority.

**Contract Term** means the minimum contract term specified in your Application, which commences on the Service Commencement Date, or, if no contract term is specified in the Application or our CRA, then there will be no minimum contract term.

**Credit Information** means:

- (a) Personal identifying particulars including your name, gender, current address (and you previous two addresses), date of birth, telephone number, mobile number, banking details, credit card details, name of employer and drivers licence number;

- (b) Your application for credit or commercial credit - the fact that you have applied for credit and the amount;
- (c) The fact that we are a current credit provider to you and any credit limit on your account;
- (d) Payments which are overdue by more than 60 days and/or for which debt collection action has started;
- (e) Advice that your payments are no longer overdue in respect of any default that has been listed;
- (f) The fact that, in our opinion, you have committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with your credit obligations);
- (g) Information about any payments, including cheques and credit cards which have been dishonoured;
- (h) Court judgments or bankruptcy orders made against you; and
- (i) The fact that we have ceased providing the Service to you (and the timing of that cessation of service)

**Credit Rating** means information about your credit worthiness, credit standing, credit history or credit capacity that credit providers may give to each other under the *Privacy Act 1998 (Cth)*

**Customer Service Guarantee** means any performance standards issued under *Part 5 of the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth)*.

**Downgrade** means a variation to the Service which reduces the capacity, use or utility of that Service and results in a reduction in the Regular Fees payable for the Service.

**Downgrade Charge** means the relevant downgrade charge (if any) specified in the Service Description.

**Excluded Event** means:

- (a) A breach of our CRA by you;
- (b) A Force Majeure Event;
- (c) A negligent or fraudulent act or omission of your or any of your employees, agents or contractors;  
or
- (d) A failure of any of Your Equipment

**Force Majeure Event** means any event outside that person's reasonable control, and includes a failure or fluctuation in any electrical power supply, failure of air conditioning or humidity control, electromagnetic interference, cable cut, fire, storm, flood, earthquake, accident, war, labour dispute (other than a dispute solely between that person and its own staff or staff under its control), materials or labour shortage, the change or introduction of any law or regulation (including the Telecommunications Legislation) or an act of omission, failure or delay of any third party or any failure of any equipment owned or operated by any third party (including any Regulatory Authority or Supplier).

**Handling Fee** means a fee incurred by us to provide you with a refund.

**Insolvent** includes having a receiver, manager, administrator, provisional liquidator or liquidator appointed to you, you entering into any scheme of arrangement with your creditors, a mortgagee entering possession or disposing of the whole or any part of your assets or business.

**Interruption** in the supply of goods or a service means a delay in supplying, a failure to supply or an error or defect in the supply of, those goods or that service.

**Material Terms** means those terms and conditions We provided to you.

**Network** means a telecommunications network, equipment, facilities or cabling.

**Personal Information** means information or opinion about you from which your identity is apparent or can reasonably be ascertained and includes your name, current and previous addresses, service number, date of birth, email address, bank account or credit card details, occupation, driver's license number and your Credit Information and Credit Rating.

**Purchased Equipment** has the meaning set out in clause 5.4

**Premises** means locations at which we supply the Service and locations to which we need to have access to supply the Service.

**Regulatory Authority** means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, the Australian Communications Industry Form Limited, the Telecommunications Industry Ombudsman or any other government or statutory body or authority.

**Related Overflow Internet Services Entity** means an entity that is related to The Overflow Internet Services Company Pty Ltd (ACN 129 726 780), in any of the ways specified in section 50 of the *Corporations Act 2001 (Cth)*.

**Service** means the service requested by you in your Application and described in the relevant Service Description and Pricing Schedule, and any related goods (including equipment) and ancillary services provided to you by us in connection with that service.

**Service Commencement Date** means the date on which we notify you that the Service is ready for use.

**Service Description** means our standard service description describing the Service and setting out specific terms and conditions for the Service.

**Special Offer** has the meaning set out in clause 8.5

**Supplier** means any supplier of goods or services (including interconnection services) which may be used directly or indirectly by us to supply the Service.

**Telecommunications Act** means the *Telecommunications Act 1997 (Cth)*.

**Telecommunications Legislation** means the *Telecommunications Act 1997 (Cth)*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth)* and Part XIB, Part XIC and related provisions of the *Trade Practices Act 1974 (Cth)*, each as amended or replaced from time to time.

**Your Equipment** has the meaning set out in clause 5.3

**You** means the customer who makes the Application and where two or more persons have applied, means those persons individually and every two or more of them jointly (and **your** will have a corresponding meaning).

**We, us** means Overflow Internet Services (ABN 76283144986 ) or any Related Entity which supplies the Service to you (and **our** will have a corresponding meaning).

Unless the context otherwise requires:

- (a) Undefined words and expressions have the same meaning as in the Telecommunication Legislation.
- (b) The expressions "we", "us", "our", "you" or "your" will include their respective successors and permitted assigns and novatees.
- (c) A reference to a person includes a reference to a person, firm, corporation or other legal entity.
- (d) A term which is defined in any part of our CRA has the same meaning in every other part of our CRA.
- (e) The singular includes the plural and vice versa.
- (f) Different grammatical forms of the same word have the corresponding meaning.
- (g) A reference to a clause is to a clause in the General Terms, unless otherwise stated.
- (h) Examples or words of inclusion are illustrative only and do not limit the generality of the relevant subject.
- (i) A "reasonable" notice period means a period which is reasonable in the circumstances taking into account technical, operational and commercial issues.